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ABSTRACT

The United Kingdom (UK) is a large producer of published materials and as such has a strong copyright law (the Copyright Act of 1956). The law protects eight categories of materials--literary, dramatic, musical, and artistic works; sound recordings; film; broadcasts; and published editions--but the law varies from one type of material to another. Some statutory exemptions from which education may benefit have been incorporated into the law, but these are very limited. In brief, copying is not allowed for "substantial" parts of original materials, sound recordings or films; published editions (except by librarians); or multiple copies of printed matter for class use. To assist educational users, certain groups of copyright owners will permit a limited amount of multiple copying of printed materials for teaching purposes; the copying of printed music and transferring of commercial sound recordings onto cassettes in certain circumstances; and some off-air recording of educational programs. Many of these organizations require licenses or fees and inquiry should be made to the publisher or production company regarding licensing arrangements. This leaflet provides only a basic outline of the subject of copyright; more detailed information can be found in other Council for Educational Technology (CET) publications. (DJR)

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CET INFORMATION SHEET NO. 6

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In this revised version of the information sheet on copyright a departure has been made from the previous one which consisted of a range of 6 leaflets on various materials with much information repeated. Here the subject is treated as a whole. It should not be regarded as a day to day tool. This is provided by 'Guideline Two Copyright Clearance, A Practical Guide' which is available from CET price £6 plus postage and packing.

The Council's Rights Development Officer is prepared to give presentations on copyright law as it effects education and training. The Council makes no charge for this service other than the reimbursement of travel costs and overnight accommodation where necessary. The presentations are illustrated, informal and adapted to meet the interests of the audience.

Introduction

Copyright is the name given to the principle that those who create works of the intellect should have a special relationship with them, in short that they should own them as a property. It seems only equitable that this should be so but there is a more pragmatic reason. If those who create or produce materials can control the use which society makes of them and can, by implication, make a charge for the value which is derived from them, they will be encouraged to produce more materials and so benefit, especially, education and the arts and sciences. The law of copyright in the UK goes back to the early eighteenth century and the principle to Roman times and its importance can be judged by the results of a recent survey which found that nearly 3% of the gross national product of the UK is derived from industries and undertakings which rely on copyright protection. The UK in common with all developed countries which are large producers of published material, has a strong protectionist copyright law while those which produce little but use the products of others tend to have less restrictive legislation.

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December 1985

Basic Copyright Law

The current legislation in the UK is the Copyright Act 1956 (called the Act from now on). It is a tedious document to read, poorly drafted and often ambiguous. It is therefore often difficult to determine exactly what may or may not legally be done with protected material, for example, teaching purposes. The lack of case law in providing precedents means that even 30 years after its passing the exact meaning of much of the Act is still unclear.

1. The Types of Material Protected

There are eight categories, the first 4 of which are the traditional types of works as follows:

- * **Literary Works**

These include virtually anything in written form and including such things as street directories, business letters, private letters as well as literature in the commonly accepted sense. Also protected as literary works are computer programs following an amendment to the Act which came into force in September 1985.

- * **Dramatic Works**

These include plays and the written instructions for a ballet or mime.

- * **Musical Works**

There is no definition, probably because of the difficulty of devising one.

- * **Artistic Works**

These include paintings, drawings, diagrams, charts, maps, engravings and photographs, all irrespective of artistic merit, along with works of architecture (buildings and models for buildings) and works of artistic craftsmanship, such as pieces of jewellery.

Three of the other types of protected material are the results of technological progress rather than the traditional works of the mind.

- * **Sound Recordings**

These include gramophone records and cassettes.

- * **Films**

These include videos although the word doesn't as such, appear in the Act.

- * **Broadcasts**

This is opposed to, and in addition to, the material actually in the broadcast.

Finally, one which is very old but which, before 1956, was not protected by the earlier legislation.

- * **Published Editions**

These are the typographical layouts which a publisher uses when setting a literary, dramatic or musical work. We refer to 'a new edition of Shakespeare' meaning a new typographical layout of a work which may have previously been published many times.

2. Two Golden Rules

The separation of protected material into categories leads to two very important rules. First, each type of material is protected in its own right, so a photograph of a painting will represent two distinct copyright elements. Second, although there is only one Act the law of copyright varies from one type of material to another and from one element to another even within the same category. As will be seen below the law for a literary work is not the same as that for a sound recording and the provisions for a painting do not reflect those for a photograph even though they both figure as artistic works.

3. Conditions for Protection

Contrary to popular belief no formality has to be followed to acquire protection, which is automatic from the moment of creation or production provided three simple conditions are met:

- * There must be originality in the sense of not having been copied rather than in the sense of being new or novel. So, if a hundred people each take a photograph of St Pauls from the same spot each would be protected as original.
- * It must be in material form hence no copyright in ideas only in the material form in which the idea is fixed.
- * It must be the work of a Qualified Person, being a British subject or resident but since the UK has treaty obligations with most countries it may be assumed for most practical purposes that the regulations in the Act apply to foreign as well as British material.

Not mentioned in the Act but of passing interest as an indication of the way the courts choose to interpret, there cannot be protection for material which is merely trivial or derivative. There must be sufficient expenditure of time or effort or talent or money to make it worth protecting.

4. Ownership of Copyright

As with any other property, copyright may be transferred by sale, gift or legacy. The ownership of copyright in material of commercial value can change hands frequently, from author to publisher, from publisher to film producer and so on. In the UK, there is no machinery for recording these changes and often it is difficult to identify, let alone trace, copyright owners.

The Act does say who is the first owner at the time of creation or production.

- * Literary, dramatic, musical and artistic works (except photographs) - the author, playwright, painter, composer, engraver etc. There are some exceptions and one of general interest is that where a work is produced as part of the duties of an employee the employer will own the copyright unless there is some agreement to the contrary.
- * Sound recordings and photographs - whoever owns the material on which the sound recording or photograph is first taken.

- * Films and videos - whoever pays for the making of it.
- * Broadcasts - BBC or IBA.
- * Published Editions - the publisher.

Further, more detailed information on this complex area is contained in the CET publication 'Copyright Agreements Between Employers and Staff in Education' available free of charge.

5. Duration of Copyright

In theory, protection lasts for a certain period and then expires, the material falling into the public domain and available for use by anyone for any purpose. In practice this does not apply and the resulting situation is complex. As a general statement it can be said that, with one exception, protection cannot possibly last less than 50 years, usually it is much longer and sometimes for ever. The exception to the rule is the published edition which is protected for 25 years only.

6. The Application of Copyright

The Act grants to the first owner of copyright the sole right to do or authorise certain acts in relation to the material. These are called the restricted acts and they vary from one type of material to another. So the first owner of the copyright in a literary work has the sole right to 7 restricted acts including reproduction which means making a copy in the same form or in different form and whether directly or indirectly. Other acts are giving a public performance, broadcasting and adapting which means translating from one language to another. As far as education is concerned the restricted acts of most interest are reproduction, adapting and giving a public performance. The Amendment about computer programs mentioned in 1 above provides that where a literary, dramatic, musical or artistic work is stored in a computer this counts as reproduction and that making a new language version of a program constitutes making an adaption of the program. From the user's point of view all this means that before copying, adapting or giving a public performance may legally proceed, the prior permission of the copyright owner, or the owner of that particular right, must be acquired. If a restricted act is undertaken without permission the rights owner may take legal action through the courts and claim damages.

Statutory Relief for Users

The main reason for the interest of the educational world in copyright matters is because education exists on a diet of material which is protected by copyright and would not function as we know it if denied access to protected materials. This has always been the case but the introduction of sophisticated equipment capable of copying most types of material quickly and cheaply combined with a move towards resource based learning has led to widescale copying of material much of which is unauthorised and therefore illegal. On the other hand there are in the Act a number of concessions to users which, if shown to be present, will result in a rights owner losing any action for infringement in the court.

*** Substantial Part**

The Act provides that in respect of all classes of material an infringement only occurs if a substantial part of the original is used. There is no definition of 'substantial' but the courts have decided that content is more important than the mere proportion of the part used to the whole. So it may be illegal to photocopy just a few bars of music taken from a lengthy work if those bars contain the main theme. The fact remains that when considering whether to copy or not the first decision to be made is whether the part to be copied is not substantial. Bear in mind that a diagram or photograph in a book is a separate work and must not be treated as just part of the book.

*** Fair Dealing**

This only applies once a substantial part is being taken. It covers only literary, dramatic, musical and artistic works and not sound recordings, films or videos, or published editions. Copies may be made for the purposes of research or private study, there being no definition of these terms. Private study is taken to mean for the use of the person making the copies so it would not be legal for a teacher to make multiple copies for distribution to pupils. Notice that research does not have to be 'private'. Fair means that the rights owner is not likely to suffer (especially) financially because the material is being copied rather than purchased.

*** Educational**

The Act, in Section 41, has special provisions for educational use but not only are these ambiguous but, even on the most generous interpretation, quite inadequate for modern teaching needs. In brief it says that teachers and pupils, in the course of instruction, at a school or elsewhere, may copy literary, dramatic, musical and artistic works provided no appliance for making multiple copies is used. School is defined in relation to the Education Act 1944 and so presumably only covers education up to school leaving age, leaving the meaning of 'elsewhere' unclear. There are no definitions of 'teacher' or 'in the course of instruction'. To be on the safe side the provision may be taken to mean that school teachers and pupils up to school leaving age may, whilst in class, copy works onto the blackboard or into note books but may not photocopy or otherwise duplicate them. On the other hand literary, dramatic, musical and artistic works (but again not published editions) may be copied without any restrictions whatever if for the purpose of asking or answering part of the questions in an examination. Examination is not defined but it is unlikely that a court would extend the term to cover mock examinations or continuous assessment.

*** Libraries**

Most librarians, including those in educational establishments, have the right to provide a photocopy of a periodical article for an applicant who requires it for research or private study. In addition they can provide a copy of a reasonable part of other works for the same purpose but must first seek permission from the copyright owner if this can be ascertained. There are a number of conditions attached to this concession and these are contained in the Copyright (Libraries) Regulations 1957 with which all librarians should be familiar. Copies can be obtained from HMSO.

It will be seen from the above that the extent of statutory exemption from which education may benefit is very limited and, except in respect of unsubstantial parts of protected items, does not extend to the copying of sound recordings or films, whether direct or off the air, nor does it permit the copying of published editions except by librarians. Most restrictive of all it does not allow multiple copies of printed matter to be made for class use.

Performer's Protection

Brief mention must be made of another piece of legislation, the Performer's Protection Acts. Performers such as actors, musicians and presenters do not have a copyright in their performances or interpretation but, under this legislation, it is a criminal offence to record, film or broadcast anyone performing a work unless their written permission is first obtained. The only concession is that the restriction does not apply if the recording or film is made only for private and domestic use. It is irrelevant whether the recording is made direct from a live performance or indirectly off a recording or broadcast. The provisions represent an additional hindrance when copying sound recordings, films and videos and when recording off the air.

Voluntary Schemes

To assist users and to supplement the concessions provided by the Act, there are a number of schemes introduced by groups of copyright owners who wish to ease the lot of education and/or to derive income from copying practices. These are summarised below but more information is available from the addresses shown or from CET in case of difficulty.

* Multiple copying of Printed Matter

Most LEAs are cooperating in a scheme set up by the Copyright Licensing Agency which represents authors and publishers. The scheme permits limited amounts of multiple copying for teaching purposes. Initially the scheme covers only schools and colleges in the maintained sector but the CLA intends to extend it to other users as well. LEAs are required to acquire a licence permitting copying and to pay fees which, eventually, will be related to the amount of copying undertaken and calculated from returns completed by users. Not all printed matter is included. Details of the scheme should be available from the local education office or from the Copyright Licensing Agency, 7 Ridgmount Street, London WC1E 7AE.

* Print Music

Music is not included in the scheme described above but the Music Publishers Association has issued a statement which indicates the circumstances in which the copying of printed music may proceed without prior permission. It can be obtained from The Music Publishers Association, 103 Kingsway, London WC2B 6QX. This statement may be taken to extend the statutory limits, not replace them.

* Sound Recordings

Two licenses are available which permit institutions and resource centres to transfer commercial sound recordings onto cassette for teaching purposes. A licence fee is charged. Details from The Mechanical Copyright Protection Society, 41 Streatham High Road, London SW16 1ER.

* Broadcasts

Because most broadcasts are of recorded material (we can ignore the copyright in the broadcast itself) off air recording is not covered by the statutory provisions. The BBC and IBA have schemes which permit the off air recording of programmes which are part of their educational output and as listed in their publications for schools and other institutions. They do not cover programmes in the general output no matter how 'educational' so valuable items like 'Horizon' are not included. Details can be had from CET. There are also schemes for the off air recording of Open University broadcasts and certain Channel 4 programmes. These are operated by Guild Organisation, Guild House, Peterborough PE2 9PZ. A limited number of London Weekend Television programmes are available for off air recording and details can be had from LWT International, Seymour Mews House, Seymour Mews, Wigmore Street, London W1H 9PE.

Regarding off air recording, in October 1980 CET suggested that in respect of programmes not covered by the licensing schemes or arrangements the harm which could be shown to have been suffered by rights owners and performers would be reduced if the following rules were adopted.

1. A recording is made only at the specific request of a teacher or for a specific teaching purpose.
2. A recording is not copied or released outside the institution.
3. A recording is not made available on open access.
4. A recording is erased as soon as the teaching need has been met.

It must be recognised that such copying would still be illegal under the terms of the Act and of Performer's Protection but any objection from those protected would most likely be in the form of a demand to stop off air recording rather than court action. It is for users to decide whether they wish to record under these guidelines.

* Other Arrangements

Various companies and organisations have their own licensing arrangements for copying whilst others make no provision for it. Enquiry should be made to the publisher, production company etc to see if a scheme is operated or if permission is given on the basis of specific application.

Public Performance

As mentioned in the applications section, one of the restricted acts is giving a public performance and it applies to literary, dramatic and musical works and to sound recordings and films and videos. Public means outside the domestic circle and it is, generally, irrelevant whether or not a charge is made for admission. The Act provides that the performance of any type of material is not public if it is in class or otherwise in the presence of an audience, in the course of the activities of a school and by teachers or pupils in attendance at the school. This does not extend to end of term concerts and plays and permission is needed for these. In respect of music this can be obtained from the Performing Right Society, Berners Street, London W1P 4AA. For records the body is Phonographic Performance Ltd., 14 Ganton Street, London W1.

The Future

The Act has been under review for some years and in 1977 the Whitford Committee published its recommendations on how it should be updated. For educational copying it favoured statutory blanket licensing schemes but this was not supported by the Government in the Green Paper of 1981. Since then there has been a further Green Paper suggesting levys on the price of blank audio and video tape which would permit off air recording for domestic and educational use. A White Paper is promised for the Autumn of 1985 and new legislation is expected in the 1986/7 session.

This leaflet provides only a basic outline of the subject of copyright. More detailed information can be found in the two publications mentioned and for these, for advice on particular aspects and to book a presentation on copyright contact Geoffrey Crabb, Rights Development Officer at the Council for Educational Technology, 3 Devonshire Street, London W1N 2BA.